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MAY 29 2007  
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11 RICHARD H. WICKING  
12 CLERK, U.S. DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE  
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17 IN THE UNITED STATES DISTRICT COURT  
18 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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21 LOUIS TORRES,

22 Petitioner,

23 vs.

24 A. P. KANE, Warden,

25 Respondent.  
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27 } No. C 03-03380 JW (PR)  
28 }

29 ORDER DENYING PETITION FOR  
30 A WRIT OF HABEAS CORPUS  
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33 Petitioner, a state prisoner, filed a pro se petition for writ of habeas corpus  
34 pursuant to 28 U.S.C. § 2254 on the grounds that his sentence under California's  
35 "Three Strikes" law violates due process. His application to proceed in forma  
36 pauperis was granted in an earlier order. This Court found that the petition, liberally  
37 construed, stated cognizable claims under § 2254 and ordered respondent to show  
38 cause why a writ of habeas corpus should not be granted. Respondent has filed an  
39 answer to the order to show cause, and petitioner has filed a traverse.  
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42  
43 **BACKGROUND**  
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45 Petitioner was found guilty by a jury in the Superior Court of the State of  
46 California in and for the County of Santa Clara of two felony counts: 1) threatening  
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1 to commit a crime which could have resulted in death or great bodily injury (terrorist  
2 threats) (Pen. Code § 422)<sup>1</sup>, and 2) dissuading or attempting to dissuade a witness (§  
3 136.1, subd. (c)(1)). (People v. Torres, No. H020387, slip op. at 10 (Cal.Ct.App.  
4 June 12, 2001) (Resp't Ex. C-9). Petitioner was also found guilty of misdemeanor  
5 assault and battery on a spouse. Id. In a separate court trial, the court found true  
6 that petitioner had suffered three prior "strikes" within the meaning of California's  
7 "Three Strikes" law (§§ 667, subds. (b)-(i) and 1170.12). Id.

8 At sentencing, the court declined to strike any of the three prior convictions  
9 and imposed concurrent 25 years to life sentences for the two felony convictions. In  
10 addition, petitioner received a concurrent county jail term for the misdemeanor with  
11 credit for time served, and a restitution fine of \$10,000. (Resp't at 3.)

12 Petitioner appealed his conviction. The California Court of Appeals stayed  
13 the 25 years to life sentence for the second felony conviction of dissuading or  
14 attempting to dissuade a witness, but otherwise affirmed the conviction. (People v.  
15 Torres, No. H020387, slip op. at 37). The California Supreme Court denied review  
16 on September 19, 2001. (Resp't at 4.)

17 Petitioner then filed his first state petition for a writ of habeas corpus in the  
18 California Supreme Court, where he raised claims not brought in the instant federal  
19 habeas petition. The state high court denied the petition on July 24, 2002. (Resp't  
20 Ex. D-2.)

21 Petitioner filed a second habeas petition in the state high court, this time  
22 raising claims brought in the instant federal habeas petition. The state supreme court  
23 again denied the petition on June 25, 2003. (Resp't Ex. E-2.) Petitioner filed the  
24 instant federal habeas petition on July 21, 2003.

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28 <sup>1</sup> Further statutory references are to the California Penal Code unless  
otherwise stated.

## DISCUSSION

### A. Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

The writ may not be granted with respect to any claim that was adjudicated on the merits in state court unless the state court’s adjudication of the claim: “(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” Id. § 2254(d).

“Under the ‘contrary to’ clause, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law or if the state court decides a case differently than [the] Court has on a set of materially indistinguishable facts.” Williams v. Taylor, 529 U.S. 362, 412-13 (2000). “Under the ‘reasonable application clause,’ a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from [the] Court’s decisions but unreasonably applies that principle to the facts of the prisoner’s case.” Id. at 413.

“[A] federal habeas court may not issue the writ simply because the court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable.” Id. at 411. A federal habeas court making the “unreasonable application” inquiry should ask whether the state court’s application of clearly established federal law was “objectively unreasonable.” Id. at 409.

A federal habeas court may grant the writ if it concludes that the state court’s

1 adjudication of the claim “resulted in a decision that was based on an unreasonable  
2 determination of the facts in light of the evidence presented in the State court  
3 proceeding.” 28 U.S.C. § 2254(d)(2). The court must presume correct any  
4 determination of a factual issue made by a state court unless the petitioner rebuts the  
5 presumption of correctness by clear and convincing evidence. 28 U.S.C.  
6 §2254(e)(1).

7 The only definitive source of clearly established federal law under 28 U.S.C.  
8 § 2254(d) is in the holdings (as opposed to the dicta) of the Supreme Court as of the  
9 time of the state court decision. Id. at 412; Clark v. Murphy, 331 F.3d 1062, 1069  
10 (9th Cir. 2003). While circuit law may be “persuasive authority” for purposes of  
11 determining whether a state court decision is an unreasonable application of  
12 Supreme Court precedent, only the Supreme Court’s holdings are binding on the  
13 state courts and only those holdings need be “reasonably” applied. Id.

14 **B. Claims and Analysis**

15 Petitioner alleges that his sentence under the “Three Strikes” law violates due  
16 process because § 667(b)-(i) and § 1170.12 as applied to petitioner’s conviction: 1)  
17 “violated a substantive state created liberty interest” (Pet. at 5A-1), and 2)  
18 “breach[ed] the expectation of the negotiated plea that attached to each individual  
19 prior” (Pet. at 5B-1).

20 **1. California’s “Three Strikes” Law**

21 Petitioner’s first claim is that two of the three prior convictions used to  
22 impose the “Three Strikes” law were in misdemeanors and not felonies because he  
23 was incarcerated for less than a year in each case. He relies solely on interpretations  
24 of California statutes in making this argument, concluding that a “constitutionally  
25 protected interest in freedom” exists. Petitioner makes no reference to any federal  
26 laws or Supreme Court precedent. He further argues that he was not afforded  
27 procedural due process protections in accordance with the California Rules of Court.  
28 Petitioner’s claims are meritless for failing to state a claim upon which federal

1 habeas relief may be granted.

2 A person in custody pursuant to the judgment of a state court can obtain a  
3 federal writ of habeas corpus only on the ground that he is in custody in violation of  
4 the Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a). In  
5 other words, a writ of habeas corpus is available under § 2254(a) "only on the basis  
6 of some transgression of federal law binding on the state courts." Middleton v.  
7 Cupp, 768 F.2d 1083, 1085 (9th Cir. 1985) (citing Engle v. Isaac, 456 U.S. 107, 119  
8 (1982 )), cert. denied, 478 U.S. 1021 (1986). It is unavailable for violations of state  
9 law or for alleged error in the interpretation or application of state law. See Estelle v.  
10 McGuire, 502 US 62, 67-68 (1991). Federal courts generally are bound by a state  
11 court's construction of state laws, see, e.g., Melugin v. Hames, 38 F.3d 1478, 1487  
12 (9th Cir. 1994) (federal court bound by Alaska Court of Appeals' interpretation and  
13 decision that state statute was properly applied to petitioner's conduct), except when  
14 it appears that its interpretation is an obvious subterfuge to evade the consideration  
15 of a federal issue. See Peltier v. Wright, 15 F.3d 860, 862 ( 9th Cir. 1994). Federal  
16 courts must presume that state courts follow the law, even when they fail to so  
17 indicate. See Poland v. Stewart, 117 F.3d 1094, 1101 (9th Cir. 1997); Jeffers v.  
18 Lewis, 38 F.3d 411, 415 (9th Cir. 1994) (en banc). It is unavailable merely because  
19 "something in the state proceedings was contrary to general notions of fairness or  
20 violated some federal procedural right unless the Constitution or other federal law  
21 specifically protects against the alleged unfairness or guarantees the procedural right  
22 in state court." Middleton, 768 F.2d at 1085.

23 A criminal defendant is entitled to due process at sentencing. See Gardner v.  
24 Florida, 430 U.S. 349, 358 (1977). A federal habeas court accordingly may call into  
25 doubt a State sentence imposed in violation of due process, for example, if a State  
26 court imposed a sentence in excess of State law, see Walker v. Endell, 850 F.2d 470,  
27 476 (9th Cir. 1987), or if it enhanced a sentence based on materially false or  
28 unreliable information, see id. at 477. Generally, a federal habeas court will not

1 review a State sentence that is within statutory limits. See id. at 476. Federal courts  
2 must defer to the state court's interpretation of state sentencing laws. Bueno v.  
3 Hallahan, 988 F.2d 86, 88 (9th Cir. 1993). An allegation of error or misapplication  
4 of state sentencing law generally does not present any ground for habeas relief.  
5 Richmond v. Lewis, 506 U.S. 40, 50 (1992).

6 Petitioner's claim that the imposition of the "Three Strikes" law violated due  
7 process is without merit. Even if the state courts erred in their application of state  
8 sentencing law, it is well-established that federal habeas relief is unavailable for  
9 violations of state law or alleged error in the interpretation or application of state  
10 law. See Estelle, 502 U.S. at 67-68; Peltier, 15 F.3d at 861-62. Merely citing the  
11 Due Process Clause does not compel a different result. Poland v. Stewart, 169 F.3d  
12 573, 584 (9th Cir. 1999). The state court's rejection of petitioner's claim was not  
13 contrary to, or involved an unreasonable application of, clearly established Supreme  
14 Court precedent, or was based on an unreasonable determination of the facts. See 28  
15 U.S.C. § 2254(d). Petitioner's claim is DENIED.

16 2. Breach of Previous Plea Bargains

17 Petitioner contends that the application of the "Three Strikes" law  
18 violates his right to due process with respect to the plea bargains for his prior  
19 convictions. Specifically, petitioner argues that he relied upon the then-existing  
20 enhancement statutes when he entered into a plea bargain for each of the prior  
21 convictions. With respect to two of the older prior convictions, petitioner claims  
22 that he relied on § 667.5(e) which at that time stated, "additional penalties provided  
23 for prior prison terms shall not be imposed for any felony for which the defendant  
24 did not serve a prior separate term in state prison." (Pet. at 5B-2). Petitioner claims  
25 this statutory language was an "inducement and consideration promised by the  
26 prosecution when negotiating a plea with [p]etitioner." (Pet. at 5B-3.) Petitioner  
27 argues that imposition of additional punishment under the "Three Strikes" law for  
28 the prior convictions constitutes a breach of the plea bargains and violates due

1 process. Petitioner's claim is without merit.

2 Once a state conviction is no longer open to direct or collateral attack in its  
3 own right because the defendant failed to pursue those remedies while they were  
4 available (or because the defendant did so unsuccessfully), the conviction may be  
5 regarded as conclusively valid. If that conviction is later used to enhance a criminal  
6 sentence, the defendant generally may not challenge the enhanced sentence through  
7 a petition under § 2254 on the ground that the prior conviction was  
8 unconstitutionally obtained, such as in violation of due process as petitioner claims  
9 in the instant petition. Lackawanna County Dist. Attorney v. Coss, 532 U.S. 394,  
10 403-04 (2001).

11 Exceptions to this provision occur only if there was a failure to appoint  
12 counsel in violation of the Sixth Amendment or the state court refused to rule on a  
13 properly presented constitutional claim. Id. at 404, 405-06. Petitioner's claim does  
14 not fall within either exception. In addition, if petitioner attempts to challenge his  
15 prior conviction, his claim would fail on the merits because his guilty plea was valid.

16 A guilty plea is valid when it "represents a voluntary and intelligent choice  
17 among the alternative courses of action open to the defendant." North Carolina v.  
18 Alford, 400 U.S. 25, 31 (1970). In order to determine whether or not the choice to  
19 plead guilty was voluntary and intelligent the circumstances surrounding the plea  
20 must be reviewed, focusing particularly on whether or not the defendant was made  
21 "fully aware of the direct consequences" of the plea. Brady v. United States, 397  
22 U.S. 742, 755 (1970); Id. at 755 (quoting Shelton v. United States, 246 F. 2d 571,  
23 672 n.2 (1957)). Although a defendant is entitled to be informed of the direct  
24 consequences of the plea, the court need not advise him of "all possible collateral  
25 consequences." Torrey v. Estelle, 842 F.2d 234, 235 (9th Cir. 1988). The  
26 distinction between a direct and collateral consequence of a plea turns on whether  
27 the result presents a definite, immediate and largely automatic effect on the range of  
28 the defendant's punishment. Id. at 236. There is no violation of due process where a

1 trial court fails to inform a defendant of collateral consequences, see Torrey, 842  
2 F.2d at 236, nor where counsel fails to do so, see id. at 237 (failure to advise of  
3 collateral consequences cannot be held to be below objective standard of  
4 reasonableness).

5 The state court's denial of this claim was not contrary to, or an unreasonable  
6 application of clearly established federal law, or was based on an unreasonable  
7 determination of the facts. See 28 U.S.C. § 2254 (d). Accordingly, petitioner's  
8 claim is DENIED.

9

10 **CONCLUSION**

11 For the foregoing reasons, the petition for a writ of habeas corpus is  
12 DENIED.

13

14 DATED: May 29, 2007

15   
JAMES WARE  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

LOUIS TORRES,  
Petitioner,  
v.  
A. P. KANE, Warden,  
Respondent.

Case Number: CV03-03380 JW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 5/29/07, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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